REMARKS/ARGUMENTS

These remarks are submitted in response to the Office Action dated February 9, 2009 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Examiner is expressly authorized to charge any deficiencies to Deposit Account No. 14-1437.

Claim Rejections – Double Patenting

Claim 13 was rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1 and 8 of co-pending application 12/180,988.

Claim 13 has been cancelled. It is believed that the newly added Claim 31 is patentable over Claims 1 and 8 of co-pending application 12/180,988.

Claim Rejections – 35 USC § 101

Claim 13 was rejected under 35 U.S.C. § 101 because it was asserted that the claimed invention is directed to non-statutory subject matter. More specifically, it was asserted that the claimed invention is directed to a system, but appears to be comprised of software alone without claiming associated computer hardware required for execution.

Applicant believes that the system as recited in Claim 13 can be implemented by hardware or a combination of hardware and software and thus is not software *per se*. For example, it is described in paragraph [0024] that the status hub can be a series of instructions embedded within a network router and/or hub. Nevertheless, Claim 13 has been cancelled and a new Claim 31 has been added to even more clearly recite hardware components of the system.

Claim Rejections – 35 USC § 112

Claims 1 and 18 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. More specifically, it was asserted that it is not clearly understood what is meant by "automatically adjusting said time threshold based upon a period using said handler" (i.e. adjusting the time threshold for the handler or for the alternative handler).

Appropriate correction has been made.

Claim Rejections – 35 USC § 103

Claims 1, 13, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,828,847 to Gehr, *et al.* (hereinafter Gehr).

Although Applicant respectfully disagrees with the rejections, Applicant has amended Claims 1 and 18 to even more clearly define the present invention and to facilitate prosecution of the instant application. Applicant has also cancelled Claim 13 and added Claim 31. The claim amendments and added claim are fully supported throughout the Specification and no new matter has been introduced.

Aspects of Applicants' Invention

It may be helpful to reiterate certain aspects of Applicants' invention prior to addressing the cited references. One embodiment of the invention, as typified by Claim 1, is a method of handling requests within an autonomic system.

The method can include handling requests with a primary handler; detecting an overload condition for the primary handler; directing requests to an alternative handler; initializing a return timer; when the return timer exceeds a time threshold for the alternative handler, routing requests to the primary handler; automatically adjusting the time threshold for the alternative handler based upon a period using the primary handler; detecting an overload condition for the alternative handler; directing requests to another alternative handler; starting another return timer, and when the another return timer

exceeds a time threshold for the another alternative handler, routing requests to the alternative handler; and automatically adjusting the time threshold for the another alternative handler based upon a period using the alternative handler. See, e.g., Specification, paragraphs [0041] to [0044]; see also Fig. 3.

The Claims Define Over The Prior Art

Gehr discloses a dynamic server switching system that maintains a list in each client which identifies the primary server for that client and the preferred communication method as well as a hierarchy of successively secondary servers and communication method pairs. In the event that the client does not have requests served by the designated primary server or the designated communication method, the system traverses the list to ascertain the identity of the first available alternate server-communication method pair. The client then uses this retrieved data to initiate future requests. The client periodically tests the primary server-communication method pair to determine whether the fault has been cleared. If so, the client reestablishes the originally selected primary server-communication method pair as the request route. This system dynamically load balances in the face of failures, handles transient faults and can use a neuromorphic processing element to monitor system activity and rewrite entries in the lists as a function of changing system activity. In this manner, the system provides dynamic server switching for maximum service availability without consuming significant processing resources. See the Abstract.

Applicant believes that Gehr at least does not disclose automatically adjusting the time threshold for the alternative handler based upon a period using the primary handler; and automatically adjusting the time threshold for the another alternative handler based upon a period using the alternative handler.

The Examiner cited col. 6, line 67 to col. 7, line 3 of Gehr as disclosing the above limitations. However, col. 6, line 67 to col. 7, line 3 of Gehr discloses that if the

communication process is completed prior to timer timeout, then the return message causes the timeout timer to be reset and processing advances from step 514 to step 510 where the process exits. It is not clear how this passage has anything to do with adjusting the time threshold for the alternative handler or the another alternative handler based upon a period using the primary handler or the alternative handler, respectively.

The present invention can automatically adjust the period for using the alternative handler (time threshold) to assure that the request does not oscillate between the primary request handler and the alternative request handler more than necessary. For example, if a usage threshold is exceeded shortly after requests are routed to the primary request handler, it can be assumed that the condition that originally caused the usage threshold to be exceeded still exists. Therefore, requests should be directed to the alternative request handler for a longer period. Accordingly, the predetermined period (time threshold) in which the alternative handler handles requests can be increased. See, e.g., Specification, paragraph [0008].

Further, the present invention can automatically adjust the predetermined period (time threshold) to assure that requests are not directed to the alternative handler longer than is necessary. For example, if the primary handler is used for a long period before an overload condition is detected, it can be assumed that an overload condition rarely occurs and the overload condition can be quickly resolved. Accordingly, the predetermined period (time threshold) for using the alternative handler can be decreased. See, e.g., Specification, paragraph [0009].

Accordingly, Gehr fails to disclose or suggest each and every element of Claims 1, 18, and 31. Applicants therefore respectfully submit that amended Claims 1, 18, and 31 define over the prior art.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. § 103 be withdrawn.

Conclusion

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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